

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Pagnamenta	Team: Squad #2	CCRB Case #: 202001913	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/05/2019 3:20 PM	Location of Incident: § 87(2)(b)	Precinct: 103	18 Mo. SOL 5/5/2021	EO SOL 12/20/2021	
Date/Time CV Reported Tue, 02/25/2020 4:47 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 02/25/2020 4:47 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Nicoll	19740	958984	103 PCT
2. SGT Edwin Espinal	03384	934831	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM James Holder	18361	951823	103 PCT
2. DTS Daniel Gasperetti	04088	950480	103 PCT
3. POM Christophe Denicker	13661	955867	103 PCT
4. SSA Edwin Ferreira	04052	932638	103 PCT
5. POM Brian Heisinger	22186	952839	103 DET

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Nicoll	Force: Police Officer Kevin Nicoll used physical force against § 87(2)(b)	
B.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal frisked § 87(2)(b)	
C.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal searched § 87(2)(b)	
D.SGT Edwin Espinal	Discourtesy: Sergeant Edwin Espinal spoke discourteously to individuals.	
E.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal frisked § 87(2)(b)	
F.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal searched § 87(2)(b)	
G.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal frisked an individual.	
H.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal searched an individual.	
I.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal frisked § 87(2)(b)	
J.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal searched § 87(2)(b)	
K.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal searched the vehicle in which § 87(2)(b) and an individual were occupants.	

Case Summary

On February 25th, 2020, § 87(2)(b) filed the following complaint in-person at the CCRB. This case was initially assigned to Inv. Alyssa Rogowski. It was reassigned to Inv. Kenneth Shelton on July 7th, 2020, upon Inv. Rogowski's resignation from the Agency. It was then reassigned to Inv. Julia Pagnamenta on May 6th, 2021, upon Inv. Shelton's resignation from the Agency.

At approximately 3:20 p.m., on November 5th, 2019, § 87(2)(b) was hanging out in his parked car at § 87(2)(b) in Queens with his brother, § 87(2)(b) and two of his friends, § 87(2)(b) and an unidentified individual. Police Officer James Holder, Police Officer Kevin Nicoll, and Sergeant Edwin Espinal of the 103rd Precinct arrived at the location in an unmarked car and approached § 87(2)(b)'s car. Police Officer Nicoll approached the front driver's side and tapped on the window. When § 87(2)(b) rolled down the window, Police Officer Nicoll allegedly opened the car door and pulled § 87(2)(b) out of his vehicle (**Allegation A: Force – Physical Force**, § 87(2)(g)). Police Officer Nicoll then frisked and searched § 87(2)(b) (**Allegation B: Abuse of authority – Frisk**, § 87(2)(g)) (**Allegation C: Abuse of authority – Search (of person)**, § 87(2)(g)). At an undetermined point in the incident after § 87(2)(b) was frisked and searched, Sergeant Espinal allegedly told the other occupants of the car, "Shut the fuck up, I'm talking" (**Allegation D: Discourtesy – Word**, § 87(2)(g)).

The officers then frisked and searched § 87(2)(b) the unidentified passenger, and § 87(2)(b) (**Allegation E: Abuse of authority – Frisk**, § 87(2)(g)) (**Allegation F: Abuse of authority – Search (of person)**, § 87(2)(g)) (**Allegation G: Abuse of authority – Frisk**, § 87(2)(g)) (**Allegation H: Abuse of authority – Search (of person)**, § 87(2)(g)) (**Allegation I: Abuse of authority – Frisk**, § 87(2)(g)) (**Allegation J: Abuse of authority – Search (of person)**, § 87(2)(g)) and then searched the front and rear areas of § 87(2)(b)'s car (**Allegation K: Abuse of authority – Vehicle search**, § 87(2)(g)).

Police Officer Nicoll and Sergeant Espinal recovered marijuana from the car and vouchered it (**Board Review 01**). Police Officer Nicoll issued summonses for § 87(2)(b) to § 87(2)(b) and § 87(2)(b) (**Board Review 02 and 03**), and a summons for § 87(2)(b) to § 87(2)(b) (**Board Review 04**). The officers discovered that § 87(2)(b) had an open warrant and he was arrested in regards.

Body-worn camera (BWC) footage of the incident was obtained from the BWCs of Police Officer Nicoll, Police Officer Holder, Detective Gasperetti, Sergeant Espinal, Police Officer Christopher Denicker, and Sergeant Edwin Ferreira, and are attached in IAs #63-68 (**Board Review 05-10**) and summarized in IA #74 (**Board Review 11**).

Findings and Recommendations

Allegation (A) Police Officer Kevin Nicoll used physical force against § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on February 25th, 2020 (**Board Review 12**) and provided a follow-up telephone statement on March 11th, 2020 (**Board Review 13**). § 87(2)(b) refused to provide the investigation with the names or contact information of the three other individuals in his vehicle, but the investigation was able to identify two of them as § 87(2)(b) and § 87(2)(b) from police documentation. Contact could not be established with § 87(2)(b) and § 87(2)(b) and the fourth passenger in the car was not identified. Police Officer Nicoll was interviewed at the CCRB on December 16th, 2020 (**Board Review 14**). Sergeant Espinal was interviewed at the CCRB on March 4th, 2021 (**Board Review 15**).

It is undisputed that § 87(2)(b) was sitting in the driver's seat inside his vehicle with § 87(2)(b) and an unidentified individual outside § 87(2)(b) in Queens, when Police Officer Nicoll approached his side of the vehicle, and ordered him to exit the vehicle.

§ 87(2)(b) stated that when Police Officer Nicoll first approached his car, he pulled him out by grasping and pulling at his clothes without providing him with a reason for doing so. In his follow-up statement, § 87(2)(b) denied that officers stated anything about marijuana during the incident. § 87(2)(b) denied that he or anyone else had smoked in the car on that day.

Police Officer Nicoll stated that he was on foot on the sidewalk in the vicinity of § 87(2)(b) for an unrelated investigation when he smelled a "heavy odor" of marijuana. Police Officer Nicoll walked down the block to try and identify where the marijuana smell was coming from. Police Officer Nicoll believed the smell came from burnt marijuana, and said he was familiar with the smell because he had been involved in numerous incidents and arrests involving marijuana. As Police Officer Nicoll approached § 87(2)(b)'s vehicle on foot, he observed an 8-inch by 12-inch tray of marijuana on the dashboard of the vehicle and made the decision to perform a stop. Police Officer Nicoll saw there were at least two occupants inside the vehicle but because the windows had "excessively dark window tints," he was unable to see clearly who was seated in the back of the vehicle. Police Officer Nicoll asked the driver to step out of the vehicle, and the driver complied. Police Officer Nicoll did not use any force to remove the driver from the vehicle.

In Police Officer Nicoll's BWC (**Board Review 05**), at runtime 00:27, within seconds of Police Officer Nicoll first approaching the driver's side of the car, he tells § 87(2)(b) as § 87(2)(b) exits the vehicle on his own, "What's the problem? The odor of marijuana." At 00:44, § 87(2)(b) says, "I didn't do nothing," and Police Officer Nicoll answers as he frisk him, "You know marijuana is still illegal?" At 02:00, after approaching the rear driver's side, Police Officer Nicoll tells § 87(2)(b) "Right now, the problem is the odor of marijuana emanating from the vehicle." At 02:30, the BWC captures what appears to be vegetative weed on the car's dashboard. At 03:08, Sergeant Espinal says, "Y'all just in the car smoking weed." At 03:11, Police Officer Nicoll says, "Just keep that stuff on your dashboard."

Police Officer Nicoll's testimony that he did not pull § 87(2)(b) out of his car when he first approached his vehicle is consistent with his BWC footage, which captures § 87(2)(b)'s exiting his car on his own, and did not show Police Officer Nicoll making any physical contact as § 87(2)(b) was exiting the vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Sergeant Edwin Espinal frisked § 87(2)(b)

Allegation (C) Sergeant Edwin Espinal searched § 87(2)(b)

Allegation (E) Sergeant Edwin Espinal frisked § 87(2)(b)

Allegation (F) Sergeant Edwin Espinal searched § 87(2)(b)

Allegation (G) Sergeant Edwin Espinal frisked § 87(2)(b)

Allegation (H) Sergeant Edwin Espinal searched § 87(2)(b)

Allegation (I) Sergeant Edwin Espinal frisked § 87(2)(b)

Allegation (J) Sergeant Edwin Espinal searched § 87(2)(b)

Allegation (K) Sergeant Edwin Espinal searched the vehicle in which § 87(2)(b)

and § 87(2)(b) were occupants.

It is undisputed that after § 87(2)(b) exited the vehicle, Police Officer Nicoll frisked and

searched him. Police Officer Nicoll then ordered § 87(2)(b) out of the vehicle and frisked and searched him and a bag hung around his neck. Sergeant Espinal who was standing at the passenger side, ordered Police Officer Denicker and Detective Gasperetti to “grab” the unidentified individual sitting on the front passenger side, and Detective Gasperetti then frisked and searched the unidentified individual. Sergeant Espinal then ordered § 87(2)(b) out of the vehicle and frisked and searched him. After the four car occupants were ordered to the vehicle’s rear, Police Officer Nicoll and Sergeant Espinal searched § 87(2)(b)’s car. After Police Officer Nicoll discovered that § 87(2)(b) had an open bench warrant, he was handcuffed, arrested, and brought back to the 103rd Precinct stationhouse.

Police Officer Nicoll and Sergeant Espinal both acknowledged searching the car’s occupants and provided the odor of burning marijuana as the reason. Sergeant Espinal explained that the “marijuana exception rule” established “probable cause” to search the vehicle and the occupants therein. Police Officer Nicoll stated that he recovered the tray of marijuana from the dashboard, and a 22-ounce Guinness beer and a marijuana cigarette in the back seat.

Sergeant Espinal and Police Officer Nicoll’s memo book entries are consistent. Police Officer Nicoll’s memo book entry (**Board Review 16**) states that he conducted a car stop in front of § 87(2)(b) due to a “strong odor of marijuana” and “marijuana in plain view (dashboard) of vehicle.” Police Officer Nicoll’s memo book entry further indicates that he issued three separate summonses to § 87(2)(b) and § 87(2)(b) and that seven small bags of marijuana were retrieved during the car stop. Sergeant Espinal’s memo book entry (**Board Review 17**) further noted that the rear left passenger in the vehicle “claimed ownership” of a “marijuana cigarette (burnt)” and that it was “recovered” from the ground by his feet.

The summons Police Officer Nicoll’s issued to § 87(2)(b) for § 87(2)(b) (Board Review 02) indicates that § 87(2)(b) was observed parked in a vehicle with a quantity of marijuana in plain view (dashboard of vehicle). The summons further indicates that upon the search incident to lawful arrest § 87(2)(b) was found in possession of seven small bags containing marijuana.

The summons Police Officer Nicoll’s issued to § 87(2)(b) for § 87(2)(b) (Board Review 03) indicates that § 87(2)(b) was observed in possession of marijuana while sitting in a parked vehicle in open view of the public. The invoice for a “controlled substance” associated with § 87(2)(b)’s summons (Board Review 01) indicates that one alleged vegetative marijuana in brown colored paper was retrieved. The summons prepared by Police Officer Nicoll and issued to § 87(2)(b) for § 87(2)(b) (Board Review 04) indicates that § 87(2)(b) was observed in a parked vehicle holding an open 22-ounce glass bottle of Guinness in plain view.

In Police Officer Nicoll’s BWC footage (Board Review 05), at runtime 04:45, Police Officer Nicoll’s starts searching the rear of § 87(2)(b)’s vehicle, where a green plastic lighter can be seen. At 06:50, Police Officer Nicoll and Sergeant Espinal search the front of the vehicle, and at 07:02, Police Officer Nicoll finds in a compartment in the driver’s door a small bag of vegetative marijuana. At 07:24, Police Officer Nicoll finds an open brown bottle in the middle console.

In Sergeant Espinal’s BWC footage (Board Review 08), at runtime 08:03, he searches the rear of the vehicle, where three open bottles of Guinness are on the floor on the passenger side. At 09:44 he lifts the back seat. At 12:53, Sergeant Espinal asks § 87(2)(b) as he stands at the back of the car, “Was that your blunt in the back seat?” § 87(2)(b) replies it is, and Sergeant Espinal orders Police Officer Nicoll to issue him a summons for the blunt. At 16:08, Sergeant Espinal walks

towards Police Officer Nicoll and tells him to issue a summons to § 87(2)(b) for having a “Guinness” in between his legs when he was sitting in § 87(2)(b)’s car. Sergeant Espinal tells Police Officer Nicoll that § 87(2)(b) was the only individual he saw holding the beer bottle in his hands.

In People v. Chestnut, 43 A.D.2d 260 (1974), the court held that the smell of marijuana smoke emanating from an automobile can be sufficient to provide police officers with probable cause to search an automobile and its occupants (**Board Review 18**). People v. Norman, 142 A.D.3d 1107 (2016), further indicated that when officers detect the odor of marijuana emanating from a parked vehicle, they have probable cause to search that vehicle without a warrant (**Board Review 19**).

§ 87(2)(g)

Allegation (D) Sergeant Edwin Espinal spoke discourteously to individuals.

§ 87(2)(b) stated that as he was standing at the rear of the vehicle, he believed his friends and brother were being searched, and that he heard Sergeant Espinal say, “Shut the fuck up, I’m talking,”

Sergeant Espinal did not believe he said, “Shut the fuck up” at any point during the incident, and he did not think he used any profanities when speaking to the occupants of the vehicle. Sergeant Espinal did not hear any of the other officers make this comment. Police Officer Nicoll stated that he did not hear Sergeant Espinal make this comment.

In none of the BWCs (**Board Review 05-10**) obtained by the investigation is Sergeant Espinal recorded saying, “Shut the fuck up.” § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to one other CCRB complaint and has been named a victim in seven other allegations (**Board Review 20**).
 - § 87(2)(b)
- Sergeant Espinal has been a member of service for 16 years and has been a subject in 21 other CCRB complaints and 47 other allegations, one of which was substantiated. § 87(2)(g)
 - In case # 201907390 an interference with recording allegation was substantiated against Sergeant Espinal. The Board recommended formalized training, but the NYPD has yet to impose discipline.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.

- § 87(2)(b), § 87(2)(c)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
- [Redacted]
[Redacted]
- [Redacted]
[Redacted]
- According to the New York City Office of the Comptroller, no Notice of Claim had been filed regarding this incident as of May 25th, 2021 (**Board Review 24**).

Squad No.: 2

Investigator: Julia Pagnamenta Inv. Pagnamenta 11/10/2021
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 11/10/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date